

FIFTH DIVISION
May 27, 2016

Nos. 1-14-1267 & 1-14-1450 (consolidated)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 12 CR 16401
)	13 CR 8065
)	
RAMON PATTERSON,)	Honorable
)	Maura Slattery Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *HELD:* (1) The trial court erred in *sua sponte* dismissing defendant's petition for relief from judgment before the passage of 30 days for the State to respond; and (2) defendant's mittimus should be corrected to reflect that he pled guilty to possession of a controlled substance.

¶ 2 Defendant Ramon Patterson pled guilty on the same date in two separate cases to the offenses of armed habitual criminal and possession of a controlled substance. He was sentenced

to six and four year terms of imprisonment, respectively. On appeal, he argues (1) the circuit court erred in *sua sponte* dismissing his petition for relief from judgment before the expiration of the 30-day period in which the State may respond; (2) the circuit court lacked the authority to convict defendant of the armed habitual criminal offense because he did not meet the statutory requirement of being “convicted a total of 2 or more times” of the qualifying offenses where his predicate offenses were charged on the same day and pled guilty to on the same day, and the sentences ran concurrently; (3) the circuit court erred in dismissing defendant’s petition for relief from judgment because his counsel failed to pursue, as promised, an appeal from the guilty plea; and (4) his mittimus should be corrected to reflect conviction of possession of a controlled substance rather than possession of a controlled substance with intent to deliver.

¶ 3 Based on the following, we vacate the circuit court’s dismissal of defendant’s petition for relief from judgment and remand for further review, and correct defendant’s mittimus to reflect his conviction of possession of a controlled substance.

¶ 4 I. BACKGROUND

¶ 5 In September 2012, the State charged defendant with one count of armed habitual criminal and several counts concerning other offenses (the 2012 case) based on allegations that defendant fled a vehicle that was stopped by the police and threw a handgun over a fence before the police apprehended him. The armed habitual criminal count alleged defendant knowingly or intentionally possessed a firearm, after having been convicted of delivery of a controlled substance in case No. 08 CR 0517801 and possession of a controlled substance in case No. 08 CR 0518102. Defendant was released on bond, and while the 2012 case was pending, the State charged him in April 2013 with one count of possession of a controlled substance, less than 10 grams of PCP, with intent to deliver within 1,000 feet of a school (the 2013 case).

¶ 6 On December 4, 2013, defendant pled guilty in the 2012 case to the offense of armed habitual criminal and was sentenced to 6 years' imprisonment. On the same day, defendant pled guilty in the 2013 case to the reduced offense of possession of a controlled substance and was sentenced for 4 years' imprisonment, to be served consecutive to his 6-year sentence.

¶ 7 On March 4, 2014, defendant mailed a late *pro se* petition to withdraw his guilty plea and vacate his sentence. He stated that he was unable to timely file the petition because he was denied access to the prison law library. He alleged he was seeking relief because the trial court and defense counsel misled him into believing he would receive credit for time spent in custody toward both sentences. He also alleged "prior convictions used was arrested, charge & sentence on same day," and "improperly & unconstitutionally insufficiently enhance my case after being Uuw for two months. Didn't properly inform me, the courts or my attorney."

¶ 8 Also on March 4, 2014, defendant mailed a late *pro se* notice of appeal. He stated he was unable to timely file the notice because he was denied access to the prison law library and did not have any resources, effective help or assistance from counsel, access to a telephone, or the address of the appellate court. He alleged counsel was ineffective, someone was "misled & incoherent at the time," and defendant was coerced to believe he would receive credit toward both sentences for the time he had spent in custody. In his affidavit, defendant alleged his appeal had merit because: he was misled by defense counsel; counsel was ineffective; the trial judge wrongly informed defendant; counsel stated he would file an appeal but failed to do so; and "Agree to if I coped-out he would give me \$1,000 of my bond slip back."

¶ 9 On March 10, 2014, the trial court received defendant's petition to withdraw the plea and notice of appeal. On March 14, 2014, the trial court denied the notice of appeal, and on March 26, 2014, the trial court denied the petition to withdraw the plea.

¶ 10 Meanwhile, on March 13, 2014, defendant mailed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)), alleging his trial counsel was ineffective and did not “put any effort forth or research.” Defendant also listed several statutory provisions, cases and court rules without any specific allegations.

¶ 11 On April 7, 2014, the trial court denied defendant’s section 2-1401 petition for relief from judgment. The trial court noted that defendant alleged counsel was ineffective and failed to “put on any effort or research additional papers.” The trial court concluded, however, that defendant was represented by two attorneys and the “motion that he sets forth is incorrect.” On April 28, 2014, defendant timely appealed the trial court’s April 7, 2014 judgment (appellate case No. 1-14-1450).

¶ 12 On May 6, 2014, defendant filed a late notice of appeal of the trial court’s December 4, 2013 judgment and sentence, alleging “in-effective counselor, misled & incoherent at the time. Coerced to believe the time I spent in the county jail would be credited on both case.” On May 15, 2014, this court granted defendant’s motion for leave to file a late notice of appeal from the trial court’s December 4, 2013 order (appellate case No. 1-14-1267). Thereafter, this court consolidated defendant’s appeal from the denial of his section 2-1401 petition in case No. 1-14-1450 with his appeal from his guilty plea in case No. 1-14-1267.

¶ 13 II. ANALYSIS

¶ 14 We review the dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). Section 2-1401 allows for relief from final judgments more than 30 days after their entry, provided the petition proves by a preponderance of evidence the existence of a defense or claim that would have precluded entry of the judgment in the original action and

diligence in both discovering the defense or claim and presenting the petition. 735 ILCS 5/2-1401 (West 2012); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). Section 2-1401 is a civil remedy that extends to criminal cases as well as to civil cases. *People v. Sanchez*, 131 Ill. 2d 417, 420 (1989).

¶ 15 Proceedings under section 2-1401 are subject to the usual rules of civil practice. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). A circuit court may *sua sponte* dismiss a section 2-1401 petition or deny relief when it does not, as a matter of law, warrant relief. *Id.* at 7. However, Illinois Supreme Court Rule 105(a) (eff. Jan. 1, 1989) provides that after a petition has been served, a respondent has 30 days to file an answer or otherwise file an appearance in the office of the clerk of the court. Consequently, a court cannot *sua sponte* dismiss a section 2-1401 petition until it is “ripe for adjudication,” which is after the State has had 30 days to respond. *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009).

¶ 16 Here, defendant and the State agree that the trial court erred in failing to wait 30 days before ruling on defendant’s section 2-1401 petition. According to the record, defendant mailed his petition on March 13, 2014; an assistant State’s Attorney on March 26, 2014, told the trial court that the State had received the petition; and the trial court *sua sponte* dismissed the petition on April 7, 2014. Clearly, the trial court *sua sponte* dismissed the petition before it was ripe for adjudication. Accordingly, we vacate the judgment of the circuit court and remand this cause to the circuit court for further proceedings. We express no opinion on the merits of defendant’s arguments, raised for the first time on appeal, that his armed habitual criminal conviction is void and his counsel rendered ineffective assistance by failing to file a motion to withdraw defendant’s guilty plea. See *People v. Bramlett*, 347 Ill. App. 3d 468, 475 (2004) (finding that the defendant forfeited consideration on appeal of the issue he failed to raise in his section 2-

1401 petition).

¶ 17 Finally, defendant and the State agree that defendant's mittimus incorrectly reflects his conviction of the Class 1 felony offense of which he was initially charged, *i.e.*, possession of a controlled substance with intent to deliver within 1,000 feet of a school (720 ILCS 570/407(b)(2) (West 2012)). According to the record, at the time defendant pled guilty, the State agreed to reduce that charge to the Class 4 felony offense of possession of a controlled substance (720 ILCS 570/402(c) (West 2012)). Accordingly, pursuant to Illinois Supreme Court Rule 615(b)(1), we correct defendant's mittimus to reflect the proper disposition of possession of a controlled substance. *People v. Latona*, 184 Ill. 2d 260, 278 (1998) (a mittimus, if incorrect, may be corrected at anytime).

¶ 18

III. CONCLUSION

¶ 19 We vacate the circuit court's dismissal of defendant's 2-1401 petition and remand for further proceedings. We also correct defendant's mittimus to reflect the proper disposition of possession of a controlled substance.

¶ 20 Judgment vacated; cause remanded; mittimus corrected.